

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil No. 05-CV-01452-RHK
v.)	
)	Hon. Richard H. Kyle
DON PROW, individually and)	Hon. Janie S. Mayeron
d/b/a Rochester Topsoil, Inc.;)	
BRYCE PROW, individually and)	
d/b/a Rochester Topsoil, Inc.;)	
and ROCHESTER TOPSOIL, INC.,)	
)	
Defendants.)	
_____)	

AMENDMENT TO CONSENT DECREE

WHEREAS, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA") and the United States Army Corps of Engineers ("Corps") (collectively, "United States"), commenced this action against Defendants, Don Prow, Bryce Prow and Rochester Topsoil, Inc. ("Rochester Topsoil") (collectively, "Defendants"), alleging that Defendants violated sections 301(a), 309 and 404 of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a), 1319, and 1344;

WHEREAS, on April 21, 2006, the Court enter a Consent Decree (the "Consent Decree") which settled the United States' claims against Defendants under the CWA set forth in the Complaint regarding the site referred to in the Consent Decree (the "Site");

WHEREAS, to date the Defendants have implemented some, but not all, of the terms and conditions of the Consent Decree and the "Willow Creek Restoration and Rock Dell Farm Wetland Mitigation" work plan ("Work Plan") attached thereto and incorporated by reference therein;

WHEREAS, the United States and the Defendants identified several minor typographical errors, superceded exhibits and/or inadvertently omitted details in the Work Plan which should be corrected or identified to eliminate the possibility of confusion in interpreting the Consent Decree and the requirements imposed on the Defendants' thereby;

WHEREAS, the United States and the Defendants have agreed to the terms of this Amendment to the Consent Decree ("Amendment") to correct or clarify the terms of the Consent Decree which are now subject to the possibility of confusion; and

WHEREAS, under Paragraph 42 of the Consent Decree, any modification of the Consent Decree must be signed by both the United States and the Defendants and approved by the Court.

NOW, THEREFORE, the United States and the Defendants, in consideration of the promises and covenants herein, and intending to be legally bound thereby, agree to the following Amendment to the Consent Decree:

1. All terms and phrases in this Amendment shall be defined as provided in the Consent Decree, unless otherwise specifically defined in this Amendment.

2. The rights and obligations of the United States and the Defendants are not modified and shall remain in full force and effect, except as specifically provided in this Amendment.

3. In this Amendment, all references to pages in the Consent Decree and the Work Plan shall refer to the documents filed in the above-captioned case and docketed in the Court's electronic docketing system as Document No. 19 and its subparts.

4a. The Work Plan (Attachment 2 to the Consent Decree, filed as Document 19-3) shall be amended by replacing page "7 of 28" with the page attached hereto as "Att. 1."

4b. The Work Plan (Attachment 2 to the Consent Decree, filed as Document 19-3) shall be amended by replacing pages "10 of 28" and "28 of 28" with the page attached hereto as "Att. 2," in both instances.

4c. The boundaries of "Zone H," as depicted in "Att. 2," are as follows:

- i. Eastern Boundary: The Section 23/24 north-south line;

- ii. Western Boundary: The eastern boundary of the old created pond, which is 500' west of the Section 23/24 north-south line;
- iii. Southern Boundary: The northern boundary of old Ditch 4; and
- iv. Northern Boundary: An east-west line beginning 50' south of the center line of Willow Creek.

For purposes of vegetation monitoring, Zone H shall be subject to the requirements of vegetation performance standard ("VPS") Standard III throughout the five (5) year monitoring period required by the Consent Decree, and subject to VPS Standard II thereafter.

5. The Work Plan (Attachment 2 to the Consent Decree, filed as Document 19-3, Page 7 of 28) shall further be amended as follows:

After "An annual monitoring report will be submitted to the EPA and COE, at the address above by September 15 (within 45 days of the vegetation monitoring activities)," insert the following:

"Report(s) shall identify specific field locations for all vegetation sampling zones selected through on-site surveying. The randomly selected sampling sites within

each zone shall also be identified in the report(s). Field corners of each vegetation sampling zone shall be field staked."

6. Attachment 8 to the Consent Decree, filed as Document 19-9, shall be replaced with the page attached hereto as "Att. 3."

7. The construction compliance schedule now included as Appendix D to the Work Plan (Document 19-3, Pages 22 & 23 of 28), shall be modified as follows:

- i. 9/15/08: Replace "Submit first annual vegetation monitoring report to USEPA and COE" with "Submit second annual vegetation monitoring report to USEPA and COE."
- ii. 9/15/09: Replace "Submit first annual vegetation monitoring report to USEPA and COE" with "Submit third annual vegetation monitoring report to USEPA and COE."
- iii. 9/15/10: Replace "Submit first annual vegetation monitoring report to USEPA and COE" with "Submit fourth annual vegetation monitoring report to USEPA and COE."

iv. 9/15/11: Replace "Submit first annual vegetation monitoring report to USEPA and COE" with "Submit fifth annual vegetation monitoring report to USEPA and COE."

8. Attachment 1 to the Consent Decree entitled "Creation and Grant of Covenants," filed as Document 19-2, Page 1 of 6, shall be modified as follows:

Delete:

"W ½ of the NW 1/4, Section 34, Township 105 North, Range 15 West, Olmsted County, Minnesota"

Insert the legal description contained in the page attached hereto as "Att. 4."

IT IS SO ORDERED.

Dated and entered this 10th day of July 2007.

BY: s/Richard H. Kyle
United States District Judge
United States District Court
for the District of Minnesota

CONSENTED TO:

FOR THE DEFENDANTS BRYCE PROW, DON PROW AND ROCHESTER TOPSOIL, INC.

s/ Bryce Prow; s/ Don Prow

DATED: 6-7-07

s/ Daniel E. Berndt
DANIEL E. BERNDT, ESQ.
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DATED: 6-7-07

FOR THE PLAINTIFF, THE UNITED STATES OF AMERICA:

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BY: s/ Friedrich A. P. Siekert DATED: July 9, 2007
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